

**IN THE MATTER OF AN APPEAL TO THE APPEAL COMMITTEE
OF THE CANADIAN INVESTOR PROTECTION FUND**

RE: [REDACTED]

Heard: February 23, 2015

HEARD BEFORE:

BRIGITTE GEISLER

Appeal Committee Member

APPEARANCES:

James Gibson

) Counsel for Canadian Investor
) Protection Fund Staff

[REDACTED]

) On his own behalf

DECISION AND REASONS

Introduction and Overview

1. [REDACTED] (the “Appellant”) was a client of First Leaside Securities Inc. (“FLSI”), an investment dealer through which over 1,200 customers made investments in various affiliated companies, trusts and limited partnerships (collectively the “First Leaside Group”). FLSI was registered with the Ontario Securities Commission and was a member of the Investment Industry Regulatory Organization of Canada (“IIROC”). It was also a member of the Canadian Investor Protection Fund (“CIPF” or the “Fund”) until its suspension by IIROC on February 24, 2012, being

the same date that FLSI sought protection under the *Companies' Creditors Arrangement Act*. The relevant history leading up to these events and the role of CIPF with respect to claims to the Fund are set out in detail in the Appeal Committee's decision dated October 27, 2014.¹

2. FLSI was declared to be insolvent on February 24, 2012. The Appellant made purchases in a number of First Leaside Group securities between February 28, 2008 and October 25, 2011. The Appellant sought recovery from CIPF on the basis that FLSI was a Member of CIPF and as such, the Appellants were entitled to protection through the Fund, which was established to provide coverage in the event of insolvency. CIPF Staff made a decision denying compensation to the Appellants on the basis that the Appellant's losses did not arise as a result of the insolvency of FLSI and thus were not covered under the CIPF Coverage Policy dated September 30, 2010.

3. On February 23, 2015 an Appeal Committee Member of CIPF's Board heard the Appellant's appeal. The main issue in the appeal was whether to depart from the decision of CIPF Staff. The appeal was heard at Neeson Arbitration Chambers in Toronto, Ontario and the hearing was open to the public. [REDACTED] was in attendance.

Chronology of Events Relevant to the Appellant's Claims

4. The claim arises from the Appellant's investments in First Leaside Group securities listed below. These investments were transferred to an account in the name of [REDACTED] at Fidelity Clearing Canada ULC ("Fidelity") following FLSI's insolvency.

- i. 4,936 units of first Leaside Wealth Management Fund purchased on March 1, 2011 for \$4,936
- ii. 50,000 units of First Leaside Fund (Series B), purchased on October 16, 2008 for \$50,000
- iii. 80,000 units of First Leaside Fund (Series C) purchased between February 28, 2008 and February 4, 2010 for a total cost of \$80,000. In addition, a further

¹ This decision is available on the CIPF website and will be referenced throughout as the "October 27, 2014 decision".

20,196 units were received in the form of stock dividends between December 16, 2008 and April 15, 2011.

5. The Appellant made additional purchases in the First Leaside Group securities as follows:
- iv. 500 units of First Leaside Properties Fund (Class B) purchased on March 27, 2009 for \$500;
 - v. 25,000 units of Development Notes Limited Partnership on August 7, 2009 for \$25,000.
 - vi. 210,970 units of First Leaside Elite Limited Partnership on October 15, 2008 for \$210,970;
 - vii. 30,000 units of First Leaside Properties Fund ITF (Class C) purchased in three equal amounts on June 2, 2009, in accounts in trust for [REDACTED] [REDACTED] for a total sum of \$30,000. In addition, each account received a further 988 units as stock dividends on December 31, 2010; and
 - viii. 25,000 units of First Leaside Venture Limited Partnership on October 25, 2011 for \$25,000.

6. Certificates for these securities noted in paragraph 5 above were delivered to the Appellant on various dates between April 7, 2009 and October 25, 2011. The Appellant has received two payouts from the insolvency Trustee in respect of the securities noted in v) and vi) above for a total amount of \$49,445.04, which he has deducted from his claim, leaving a net claim of \$410,645.58.

The Appellant's Applications for Compensation

7. The Appellant applied to CIPF on August 8, 2012 for compensation for his losses in investments made through CIPF. By letter dated March 14, 2014, the Appellant was advised that CIPF Staff was unable to recommend payment of his claim. The relevant part of the letter reads as follows:

As a basis for explaining your claim to CIPF, you stated:

“...it is such a shame that the principals of FLS lost their perspective on a viable investment model, and with self-deluded executive power turned to greed and grandeur.”

You also stated:

“...In the past number of months it has been apparent that the solicitation of my funds for certain investment entities, was indeed a misnomer. The misuse and manipulation of the capital was hidden in a web of confused directions. What appeared to be a solid track record, has now been exposed as false front for building a very poorly managed empire....”

While you have not provided evidence of the truth of all of the assertions in support of your claim, losses caused by dealer misconduct, compliance failures or breaches of securities regulatory requirements in respect of the distribution of securities are not covered by CIPF. The securities that you purchased were subject to the disclosure of an offering memorandum or other offer documentation which, among other things, disclosed the risks relevant to the purchase and investment. These investments, like any other securities, were subject to market forces and, unfortunately, your loss appears to have been a loss caused by a change in the market value of your investment and not a loss resulting from the insolvency of FLSI.

With respect to the securities that you purchased and which are described in Table 1² below, they were properly recorded in the books and records of FLSI at the date of Insolvency. Those securities were transferred to accounts in your name at another IIROC Dealer Member subsequent to February 24, 2012

In addition, at the date of insolvency, the securities described in Table 2³ below were not held by, or in the control of, FLSI. Therefore, the loss is not one that is eligible for CIPF coverage, as indicated above.

Analysis

8. The Appellant put forth his opinion, substantiated by reference to regulatory proceedings by IIROC and the OSC, that especially during the period while the OSC was investigating the companies, the funds raised by the First Leaside Group were used for improper purposes. He noted that the receiver had difficulty in tracing funds from investors; he suspects that investors' monies were used as part of a Ponzi scheme or for the personal benefit of the principals of the

² See Paragraph 4 for a list of these securities.

³ See Paragraph 5 for a list of these securities.

companies. He also noted that the IIROC regulatory decision regarding Messrs. Philips and Wilson commented on the fees and expenses which were charged to the 'blind trust' investments, which were described as being excessive. He described this as a blatant conversion of investors' funds.

9. The Appellant expressed concern about the conduct of the regulators and the insolvency receiver. He made reference to a report from Grant Thornton that suggested that if a proper business plan had been adopted, there could have been a rescue of the companies to benefit the investors. He also wondered why the regulators had not warned investors earlier that there were difficulties at the companies.

10. The Appellant commented on the statement made by CIPF in the Amended Claim Summary which stated that the securities in question had no value, as shown on the client account statements for February, 2012. CIPF counsel advised that the acronym on the statement "N/A" should have been read as meaning "Not Available", rather than "Not Applicable". The acronym is meant simply to indicate that a value for the securities is not available, rather than there being no value.

11. The facts of this case have a similarity to those of the Appellant in the October 27, 2014 Appeal Hearing with respect to the timing of the investment. The Appellant in this case also raised arguments similar to those advanced at the October 27, 2014 hearing. Those arguments related to allegations of possible fraud, material non-disclosure and misrepresentations by FLSI. The main position advanced was that funds given to FLSI to invest in securities of the First Leaside Group were unlawfully converted by FLSI and as such, the Fund should provide coverage. The October 27, 2014 decision deals extensively with this and other arguments. This Appeal Committee adopts the reasoning in the October 27, 2014 decision.

12. It is important to appreciate the nature of CIPF coverage, namely, that it is custodial coverage to ensure that securities are accounted for and returned to the investor, which the Appellant acknowledges has occurred.

13. As in the October 27, 2014 decision, the Appeal Committee has considerable sympathy for the Appellant's position and appreciates his attendance to put forth his submissions; however, I conclude that his submissions in this appeal are not persuasive and do not give rise to a successful claim for compensation from CIPF.

Disposition

14. The appeal is dismissed. The decision of CIPF Staff is upheld.

Dated at Toronto, this 27th day of February, 2015

Brigitte Geisler

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